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17 **UNITED STATES DISTRICT COURT**

18 **DISTRICT OF NEVADA**

19 LIBERTY MEDIA HOLDINGS LLC,

20 Plaintiff,

21 CASE NO.: 2:12-cv-00923-LRH-(GWF)

22 v.

23 **DEFENDANTS SERGEJ LETYAGIN AND**
24 **IDEAL CONSULT, LTD.'S OPPOSITION**
TO MOTION TO STRIKE THE SECOND
AFFIDAVIT OF SERGEJ LETYAGIN

25 SERGEJ LETYAGIN, d/b/a SUNPORNO.COM;
26 IDEAL CONSULT, LTD.; "ADVERT";
27 "CASTA"; "TRIKSTER"; "WORKER";
28 "LIKIS"; "TESTER"; and DOES 1-50,

Defendants.

26 Defendants Sergej Letyagin ("Mr. Letyagin") and Ideal Consult, Ltd. ("ICL") (and
27 collectively, "Defendants"), by and through their undersigned counsel, hereby submit this
28 Opposition to Motion to Strike the Second Affidavit of Sergej Letagin (the "Opposition Brief").

1 This Opposition Brief is based upon the pleadings and records on file herein, the Memorandum
 2 of Points and Authorities set forth below, and any oral argument presented to this Court.

3 **I. MEMORANDUM OF POINTS AND AUTHORITIES**

4 ***“The lady doth protest too much, methinks.”***

5 Hamlet Act 3, scene 2, 222–230

6 It's a rather clever trick that Plaintiff Liberty Media Holdings LLC ("Plaintiff") attempts
 7 to pull on this Court with Plaintiff's Opposition to the Defendants' Motion to Dismiss and
 8 Plaintiff's Motion to Strike the Second Affidavit of Sergej Letyagin (Dkt. No. 34) (the "Motion
 9 to Strike"). First, in its Opposition to Mr. Letyagin's and ICL's Motion to Dismiss (Dkt. No.
 10 28), Plaintiff raises a series of unsubstantiated and specious factual allegations, in an attempt to
 11 block Defendants' Motion to Dismiss for Lack of Personal Jurisdiction (Dkt. No. 16). Then,
 12 when the Defendants file a reply brief and supporting affidavit which do nothing more than
 13 specifically refute, point by point, the very arguments raised by the Plaintiff, the Plaintiff moves
 14 for this Court to strike Mr. Letyagin's second affidavit, claiming that an affidavit filed in support
 15 of a reply brief is improper. It is an argument which is too clever by half.

16 Preliminarily, the Plaintiff's Motion to Strike cites nothing more than cases which stand
 17 for the unremarkable proposition that a party should not ordinarily be permitted to raise in a
 18 reply brief new arguments not previously raised because this would leave the opposing party
 19 without the opportunity to respond to the newly-raised arguments. Nothing of the sort has
 20 occurred here. Instead, it was the *Plaintiff* who raised new (and unsupported) arguments in its
 21 Opposition. Had the Defendants *not* responded to these arguments, the Plaintiff would now be
 22 telling the Court that the Defendants' silence was an indication that the Defendants could not
 23 refute Plaintiff's claims. Since the Defendants *have* refuted the Plaintiff's claims – with sworn
 24 testimony – the Plaintiff has chosen to complain about *that* instead. It is a classic heads-I-win,
 25 tails-you-lose ploy.

26 Even more telling than what the Plaintiff's Motion to Strike *says*, however, is what it
 27 *doesn't* say. First, nowhere in the Plaintiff's Motion does the Plaintiff ever actually say *what*
 28 new arguments or facts were allegedly raised in Mr. Letyagin's second affidavit. There is a

1 reason for this. The only “new” facts in Mr. Letyagin’s affidavit are those that respond directly
2 to the *Plaintiff’s* new allegations (hardly a situation in which the Plaintiff has not had an
3 opportunity to comment upon the facts at issue).

4 Finally, even if the Plaintiff *had* identified some “new” statement in Mr. Letyagin’s
5 second affidavit, it has failed entirely to take the opportunity to refute such “new facts” in its
6 Motion to Strike. As this Court recently held, such a failure renders the Motion to Strike moot.
7 *Langermann v. Seitz*, 2012 U.S. Dist. LEXIS 99445 (D. Nev. July 17, 2012) (“Plaintiff’s motion
8 to strike essentially argues that by filing the declaration in the reply he was denied a chance to
9 respond to it. Since Plaintiff’s motion to strike gave him the opportunity to address the
10 declaration, and good cause lacking, the Court denies the motion to strike as moot.”)

11 It is, in the end, understandable why the Plaintiff would want to strike Mr. Letyagin’s
12 second affidavit – Mr. Letyagin’s affidavit demonstrates again that the Plaintiff’s arguments are
13 without merit and that this Court lacks personal jurisdiction over the Defendants. That the
14 Plaintiff wishes to shield the Court from the facts, however, is not actually a valid reason for the
15 Plaintiff to be allowed to obtain an order striking Mr. Letyagin’s affidavit.

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II. CONCLUSION

For the reasons articulated herein, Plaintiff's Motion to Strike the second affidavit of Mr. Letyagin should be denied.

DATED this 14th day of August, 2012.

**COTTON, DRIGGS, WALCH,
HOLLEY, WOLOSON & THOMPSON**

/s/ James D. Boyle
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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I certify that on the 14th day of August, 2012, I caused the document entitled **DEFENDANTS SERGEJ LETYAGIN AND IDEAL CONSULT, LTD.'S OPPOSITION TO MOTION TO STRIKE THE SECOND AFFIDAVIT OF SERGEJ LETYAGIN**, to be served as follows:

Attorneys of Record	Parties Represented	Method of Service
Marc J. Randazza, Esq. Ronald D. Green, Esq. Randazza Legal Group 6525 West Warm Springs Rd., Suite 100 Las Vegas, Nevada 89118 E-mail: mjr@randazza.com	Plaintiff, Liberty Media Holdings, LLC	<input type="checkbox"/> Personal Service <input checked="" type="checkbox"/> Email/E-File <input type="checkbox"/> Fax Service <input type="checkbox"/> Mail Service

DATED this 14th day of August, 2012.

Carol Gray

An Employee of Cotton, Driggs, Walch,
Holley, Woloson & Thompson